

SENATE BILL 2088
By Cooper

AN ACT to amend Tennessee Code Annotated, Title 70, Chapter 7, relative to agricultural, forest and other undeveloped lands available for recreational or educational purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 70-7-101, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The general assembly hereby acknowledges that (1) urbanization constitutes the greatest threat to Tennessee's remaining agricultural and forestlands; (2) sustainable maintenance of Tennessee's agricultural and forest landscape is essential to the health and well-being of all citizens; (3) agricultural, forest and other undeveloped lands available for recreational and educational purposes have significantly declined in recent years; and (4) persons who participate in recreational and educational activities may incur injuries as a result of the inherent risks involved in such activities. The general assembly finds that the State of Tennessee and its citizens derive numerous economic and personal benefits from recreational and educational activities. It is, therefore, the legislative intent of this chapter to encourage recreational and educational activities by reclassifying the liability standards of those involved in such activities.

(b) As used in this chapter, unless the context otherwise requires:

(1) "Consideration" means a price or fee paid for services, entertainment, recreation performed, or products offered for sale on land or in return for an invitation or permission to enter upon land, except as otherwise excluded in this chapter; provided, however, "consideration" does not include:

(A) Unless otherwise agreed in writing, any lease, dedication, license or easement, or the proceeds thereof, by an owner of land to a

nonprofit organization or governmental entity for educational or recreational purposes;

(B) Any action taken by a person, legal entity, nonprofit organization, or governmental entity other than the owner, or any monetary contribution made, in either event, whether or not sanctioned or solicited by the owner, the purpose of which is to:

(i) Improve access to land for educational or recreational purposes,

(ii) Remedy damage to land caused by educational or recreational use, or

(iii) Provide warning of hazards on, or remove hazards from land used for educational or recreational purposes;

(C) Unless otherwise agreed in writing or otherwise provided by the state or federal tax codes, any property tax abatement or relief received by the owner from the state or local taxing authority in exchange for the owner's agreement to open the land for educational or recreational purposes; or

(D) Unless otherwise agreed in writing, any contribution of in-kind services or cash paid to reduce or offset costs and eliminate losses from educational or recreational use;

(2) "Educational purpose" means any activity undertaken as part of a formal or informal educational program or otherwise undertaken for the purpose of viewing historical, natural, archaeological, or scientific sites;

(3) "Land" means real property, land and water, but does not include any dwelling or the property immediately adjacent to and surrounding such dwelling that is generally used for activities associated with occupancy of the dwelling as a living space;

(4) "Landowner" means the legal title holder or owner of such land or premises, or the person entitled to immediate possession thereof, and includes any lessee, occupant or any other person in control of the land or premises; and

(5) "Recreational purpose" means any activity undertaken for the purpose of recreation, exercise, education, relaxation, refreshment, diversion, or pleasure.

SECTION 2. Tennessee Code Annotated, Section 70-7-102, is amended by deleting the section in its entirety and by substituting instead the following:

(a) As used in this section, "landowner" includes only a person or entity who:

(1) Does not charge a consideration for use of the premises; or

(2) Charges consideration for use of the premises, but whose total consideration collected in the previous year for all recreational and educational use of the entire premises of the landowner is not more than twenty (20) times the total amount of real property taxes imposed on the premises for the previous calendar year.

(b) Except as specifically recognized by or provided for in this act, a landowner, who either directly or indirectly invites or permits, with or without consideration, any person to use such land for educational or recreational purposes, owes such person the same duty of care that such landowner owes a trespasser; and such landowner shall not be required to give any warning of hazardous conditions, uses of, structures, or activities on such land or premises to any person entering on such land or premises for such purposes. This chapter does not limit the liability which otherwise exists for gross negligence or willful or wanton conduct that results in a failure to guard or warn against a dangerous condition, use, structure or activity.

SECTION 3. Tennessee Code Annotated, Section 70-7-103, is amended by deleting the section in its entirety and by substituting instead the following:

(a) As used in this section, "landowner" includes only a person or entity who:

(1) Does not charge a consideration for use of the premises; or

(2) Charges consideration for use of the premises, but whose total consideration collected in the previous year for all recreational and educational

use of the entire premises of the landowner is not more than twenty (20) times the total amount of real property taxes imposed on the premises for the previous calendar year.

(b) A landowner, who either directly or indirectly invites or permits, with or without consideration, any person to use such land for educational or recreational purposes, does not thereby:

(1) Extend any assurance that the premises are safe for such purpose;

(2) Constitute the person to whom permission has been granted to legal status of an invitee to whom a duty of care is owed; or

(3) Assume responsibility for or incur liability for any injury to such person or purposely caused by any act of such person to whom permission has been granted except as otherwise exists for gross negligence or willful or wanton conduct that results in a failure to guard or warn against a dangerous condition, use, structure or activity.

SECTION 4. Tennessee Code Annotated, Section 70-7-104, is amended by deleting the section in its entirety.

SECTION 5. Tennessee Code Annotated, Section 70-7-105, is amended by deleting the section in its entirety.

SECTION 6. This act shall take effect July 1, 2004, the public welfare requiring it.